

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #6	CCRB Case #: 201904033	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/09/2019 6:38 PM	Location of Incident: Fordham Road 4 subway station	Precinct: 52	18 Mo. SOL 11/9/2020	EO SOL 6/26/2021	
Date/Time CV Reported Fri, 05/10/2019 11:50 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/10/2019 11:50 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Railyng Frias	30952	946480	TB DT11

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Elizabeth Munoz	00757	966730	TB DT11

Officer(s)	Allegation	Investigator Recommendation
A.POM Railyng Frias	Abuse: Police Officer Railyng Frias interfered with § 87(2)(b)'s use of a recording device.	
B.POM Railyng Frias	Force: Police Officer Railyng Frias used physical force against § 87(2)(b)	

### Case Summary

On May 10, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On May 9, 2019, at approximately 6:40 p.m., § 87(2)(b) jumped over the turnstile without paying, at the Fordham Road 4 subway station in the Bronx. § 87(2)(b) was stopped by PO Railyng Frias and PO Elizabeth Munoz, of Transit Bureau District 11. While PO Frias wrote § 87(2)(b) a summons for fare evasion, § 87(2)(b) attempted to record the interaction with his cell phone. PO Frias told § 87(2)(b) to put his cell phone away (**Allegation A: Abuse of Authority**, § 87(2)(g)). After PO Frias issued the summons, he told § 87(2)(b) to leave the subway station several times, which § 87(2)(b) refused to do. PO Frias then pushed § 87(2)(b) through the turnstile and placed him under arrest (**Allegation B: Force**, § 87(2)(g)). In addition to the summons for fare evasion (Board Review 01), § 87(2)(b) was arrested for § 87(2)(b) (Board Review 02). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

PO Frias' body-worn camera captured this incident. The footage is located in Investigative Action 52 (Board Review 03) and the summary is located in Investigative Action 86 (Board Review 04). Video was also obtained from the MTA, but it did not capture this incident.

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Police Officer Railyng Frias interfered with § 87(2)(b)'s use of a recording device.**

In PO Frias' body-worn camera (BWC) footage (Board Review 03), beginning at the 00:00 mark in the video player, § 87(2)(b) held his cell phone in his hand. At the 00:30 mark, PO Frias told § 87(2)(b) that he needed to put his phone away. PO Frias and § 87(2)(b) argued about the phone and PO Frias told § 87(2)(b) two more times to put his phone away. At the 00:40 mark, § 87(2)(b) asked if he can record PO Frias and he replied, "Not right now, we're in the middle of something." At the 01:26 mark, PO Frias told § 87(2)(b) to put his phone away or he would write the ticket in the precinct. At the 04:22 mark, PO Frias asked § 87(2)(b) for his address and he replied that he just moved and needed to check his phone to obtain the address. PO Frias told § 87(2)(b) that he could use his phone to retrieve the information. Throughout the interaction, § 87(2)(b) was argumentative, impatient, and repeatedly questioned PO Frias. No mention of a fear for safety was captured on his BWC.

§ 87(2)(b) testified (Board Review 05) that while PO Frias wrote him a summons for jumping over the subway turnstile, he attempted to record the interaction with his cell phone. PO Frias told him to put his phone away and informed § 87(2)(b) that he was recording with his body-worn camera. As an attempt to deescalate the situation, § 87(2)(b) cooperated and put his phone away, but felt that PO Frias tried to prevent him from recording.

PO Frias testified (Board Review 06) that he may have told § 87(2)(b) to put his phone away because he did not want § 87(2)(b) to enter his pockets while stopped, for everyone's safety. PO Frias did not know if § 87(2)(b) had a weapon. PO Frias did not recall whether § 87(2)(b) said that he wanted to record the interaction. PO Frias was directly in front of § 87(2)(b) approximately an arm's length away. If § 87(2)(b)'s phone was in his hand and he wanted to record, he would have been allowed to do so. After PO Frias' BWC footage was played, in which § 87(2)(b)'s phone was visible in his hand, PO Frias stated that § 87(2)(b) was not able to record because they were in the middle of preparing the summons and § 87(2)(b) was noncompliant, insofar as he refused to pay his fare, refused to speak with an MTA employee, and argued with the officers. PBA counsel Kate Conlon interjected and asked whether § 87(2)(b) could have used his cell phone as a weapon. PO Frias concurred and stated that § 87(2)(b) could have used his phone

to hit him or could have taken a razor blade out of the phone. § 87(2)(b) could have used his phone as a weapon given his behavior and attitude throughout the interaction, and PO Frias did not know what he was capable of doing. There was nothing that made PO Frias think that there could be a razor blade in § 87(2)(b)'s phone. If § 87(2)(b) had recorded the interaction, it would not have physically interfered with PO Frias' ability to continue writing the summons.

PO Munoz testified (Board Review 07) that § 87(2)(b) was angry that he was being issued a summons, but she did not have any specific safety concerns. If § 87(2)(b) wanted to record the interaction, he would not have been able to do so, given that individuals who are stopped must have their hands free, so that they cannot potentially use anything in their hands as a weapon.

Individuals have a right to lawfully record police activity. This right extends to individuals in public places, such as streets, sidewalks, and parks, as well as private property in which the individual has the legal right to be present. This right to record can be limited based upon officer safety concerns or when a violation of law is committed. Officers cannot discourage an individual from recording police activity or intentionally block or obstruct recording devices when there is no legitimate law enforcement reason to do so. NYPD Patrol Guide, Procedure 203-29 (Board Review 08).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED].

**Allegation (B) Force: Police Officer Railyng Frias used physical force against § 87(2)(b)**

In PO Frias' BWC footage (Board Review 03), at the 12:21 mark in the video player, PO Frias handed § 87(2)(b) a summons and told him to leave the subway station because he was being ejected for jumping over the turnstile. § 87(2)(b) replied that he had proof of purchase. PO Frias told § 87(2)(b) to leave several times and § 87(2)(b) repeatedly stated that he was not leaving. At the 13:15 mark, § 87(2)(b) walked toward the turnstiles. PO Frias told § 87(2)(b) several more times to leave the station and § 87(2)(b) repeatedly replied that he was not leaving. At the 13:38 mark, as PO Frias and § 87(2)(b) faced each other, PO Frias grabbed § 87(2)(b)'s upper right arm with his left hand, pushed § 87(2)(b)'s upper chest with his open left hand, and pushed § 87(2)(b) backwards through the subway turnstile. Based upon the BWC angle, only PO Frias' left hand and § 87(2)(b)'s right side are visible. After they passed through the turnstile, PO Frias continued to push § 87(2)(b) with his left hand toward an adjacent wall. At the 13:49 mark, PO Frias told § 87(2)(b) that he was under arrest, turned § 87(2)(b) around, and handcuffed him.



Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date